United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

77-7091

United States Court of Appeals
FOR THE SECOND CIRCUIT

FORD MOTOR COMPANY,
Plaintiff-Appellant,

against

M.V. "AUSTRAL ENTENTE", her engines, boilers, etc.,

and against

FARRELL LINES, INC.; UNIVERSAL TERMINAL and STEVEDORING CORPORATION and FRANK J. HOLLERAN, INC.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiff-Appellant
14 Wall Street
New York, New York 10005

LILLY, SULLIVAN & PURCELL
Attorneys for Defendant-Appellee Farrell Lines, Inc. & M.V. "Austral Entente"
17 Battery Place
New York, New York 10004

GRAINGER & TESORIERO
Attorneys for Defendant-Appellee Universal Terminal and Stevedoring Corporation
17 Battery Place
New York, New York 10004

HILL, BETTS & NASH
Attorneys for Defendant-Appellee Frank J. Holleran, Inc.
One World Trade Center
New York, New York 10048

UNITED STATES COURT OF APPEALS
FILED
APR 1 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	PAGE
Docket Entries	1a
Order and Judgment (IBW), Dated January 3, 1977	5a
Affidavit of Jeffrey V. Boxer, Dated November, 1976, in Support of Motion for Partial Summary Judgment	7a
Exhibit A—Short Form Bill of Lading	9a
Exhibit B—Long Form Bill of Lading	11a
Affidavit of Celestino Tesoriero, in Support of Motion for Partial Summary Judgment	12a
Affidavit of Robert H. Peterson, in Support of Motion for Partial Summary Judgment	14a
Answering Affidavit of Vincent L. Leibell, Jr., in Opposition to Motions for Partial Summary Judgment	16a
Exhibit 1—Preliminary Survey Report	21a
Exhibit 2—Survey Report	23a
Reply Affidavit of Celestino Tesoriero, in Support of Motion for Partial Summary Judgment	24a
Reply Affidavit of Robert H. Peterson, in Support of Motion for Partial Summary Judgment	26a

PAGE

Affidavit of Vincent L. Leibell, Jr., in Response to Reply Affidavits 28a

Excerpts From Deposition of Frank J. Holleran, Inc. 29a

Excerpts From Deposition of Farrell Lines, Inc. ... 30a

Endorsed Memorandum of Wyatt, U.S.D.J., Re Motion of Defendant Farrell Lines 30a

Endorsed Memorandum of Wyatt, U.S.D.J., Re Motion of Defendant Universal Terminal 31a

Endorsed Memorandum of Wyatt, U.S.D.J., Re Motion of Defendant Frank J. Holleran, Inc. 31a

Order of the Court of Appeals, Granting Leave to Appeal 32a

Docket Entries.

FORD MOTOR COMPANY -v- M.V. "AUSTRAL ENTENTE", her engines, boilers, etc., et al.

DATE	NR.	PROCEEDINGS
10-21-75	1	Filed complaint & issued summons.
11-05-75	2	Filed Summons and marshals ret. Served: Farrell Lines Inc. on 10-30-75 Frank J. Holleran Inc. on 10-24-75 Universal Terminal & Stevedoring Corp. on 11-7-75.
11-13-75	3	Filed Pltffs. Notice of deposition of dft. Universal Terminal & Stevedoring Corp. on 12-8-75.
11-26-75	4	Filed Deft. Frank J. Holleran ANSWER to Cross Claim by Co Dft. Farrell Lines.
11-19-75	5	Filed ANSWER OF deft's M.V. Austral Enrente & Farrell Lines Inc. & Cross-Claim of Farrell Against Co-Deft's Universal Terminal & Stevedoring Corp. & Frank J. Holleran Inc. L.S.&.P.
11-19-75	6	Filed ANSWER of Deft. Frank J. Holleran & Cross Claim against deft Universal Terminal & Stevedoring Corp
12-02-75	7	Filed Deft. Universal Terminal & Stevedoring Corp. ANSWER to Cross Claim of Deft. Farrell Lines Inc.
11-19-75	8	Filed Defts. M.V. Austral Entente & Farrell Lines Inc. Interrogs.
11-19-75	9	Filed Defts. Notice of deposition of pltff. on 12-5-75.
11-21-75	10	Filed Pltffs. Notice of deposition of deft. Frank J. Holleran Inc. on 12-10-75.
12-02-75	11	Filed Deft. Universal Terminal & Steve- Corp. Answer to Interrogs.

Docket Entries.

Date	Nr.	Proceedings
12- 8-75	12	Filed Answer of deft F. J. Holleran, Inc. to cross claim by deft Universal Terminal and stevedoring Corp.
12- 8-75	13	Filed Answer of deft Farrell Lines, Inc. to the cross claim of deft Universal Terminal & Stevedoring Corp.
12- 8-75	14	Filed Reply of defts Farrell Lines Incorp. and MV Austral Entente to the cross claim in the answer of Frank J. Holleran, Inc.
12-18-75	15	Filed amended cross claim by deft. F. J. Holleran, Inc. against deft. Universal Terminal and Stevedoring Corp. as indicated.
12-30-75	19	Filed Answer and cross claim of deft Universal Terminal and Stevedoring Corp. to the cross claim of deft Frank J. Holleran, Inc.
1- 9-76	20	Filed Dft. Universal Terminal & Stevedoring Corp. Answer to Amended Cross Claim. GT
4-13-76	21	Filed Notice that pltff will take deposition of deft on 4-29-76 as indicated.
5-12-76		Pre-Trial Conference held by Mag Bermikow.
11- 3-76	22	Filed/Affidavit & Notice of motion of deft Universal Terminal for an order granting partial summary judgment etc, rtble on 11-12-76.
11- 3-76	23	Filed defts memo of law in support of said motion as indicated.
11-10-76	24	Filed Affidavit & Notice of Motion by deft Farrell for an order granting partial summary judgment, etc, rtble on 12-3-76.

Docket Entries.

Date	Nr.	Proceedings
11-10-76	25	Filed memo of law by deft Farrell Lines, Inc. and M. V. Austal Entente motion for partial summary judgment.
11-22-76	26	Filed Affidavit & Notice of Motion by deft Frank J. Holleran, Inc. for an order granting partial summary judgment, etc, rtble on 12-3-76.
11-22-76	27	Filed memo of law in support of said motion.
11-24-76	28	Filed pltffs brief in opposition to the motions by defts for partial summary judgment.
11-24-76	29	Filed Pltffs Rule 9 (g) Statement, as indicated.
12- 1-76	30	Filed Pltffs reply brief as indicated.
12- 1-76	31	Filed Reply Affidavit of deft Universal Terminal and Stevedoring Corp. in support of its motion for summary judgment etc, as indicated.
12- 2-76	32	Filed Reply Affidavit of deft Holleran, Inc. as indicated.
12- 2-76	33	Filed Reply memorandum of law by deft Hollern Inc. as indicated.
12- 6-76	34	Filed pltffs affidavit in response to reply affidavits as indicated.
12- 6-76	35	Filed pltffs brief in response to defts reply briefs.
12- 6-76	3	Filed memo and on motion dated 11-3-76. The motion is granted on the ground that the stevedore is entitled to the same limitations as the carrier. Settle order which may include the statement in 28 USC sec 1292(b) Wyatt J. m/n.

Docket Entries.

Date	Nr.	Proceedings
12- 6-76		Filed memo end on motion dated 11-22-76. Motion granted on the same basis as that of the stevedore. Seattle order Wyatt J. m'n.
12- 6-76		Filed memo end on motion dated 11-10-76. Motion granted in open Court without opposition. Settle order m'n Wyatt J.
1- 3-77		Filed order and judgment . . . ordered that motion of deft Farrell Lines, Inc. . . . Ordered motion of deft Universal Terminal Corp. is granted. However this Court is of the opinion that this involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate determination of the litigation. . . . motion of deft Holleran Inc. is granted. However the Court is of the opinion that this involves a controlling question of law etc . . . Judgment entered 1-3-77 Clerk.
2-23-77	36	Filed Pltffs. notice of appeal to 2nd Circuit from the provisions of an order entered herein on Jan. 3, 1977 by the Hon. Inzer B. Wyatt U.S.D. Judge granting partial summary judgment to defts. Universal Terminal and Stevedoring Corp. and Frank J. Hollerann, Inc., Mailed all copies.
2-24-77		Filed Appeal bond in the sum of $250.00 Federal Insurance Co.

Order and Judgment (IBW), Dated January 3, 1977.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 Civil 5195 (IBW)

FORD MOTOR COMPANY,

Plaintiff,

—against—

M.V. "AUSTRAL ENTENTE", her engines, boilers, etc.,

—and against—

FARRELL LINES, INC.; UNIVERSAL TERMINAL AND STEVEDORING CORPORATION; and FRANK J. HOLLERAN, INC.,

Defendants.

ORDER AND JUDGMENT

The three above-named defendants having separately moved this Court for partial Summary Judgment, upon the ground that each is entitled to the benefit of the $500.00 per package limitation pursuant to the Carriage of Goods by Sea Act 46 U.S.C. 1304 (5), and due consideration having been given, and a memorandum decision having been endorsed on all motion papers, under date of December 3, 1976, it is hereby

ORDERED, that the motion of defendant, Farrell Lines, Incorporated, is granted upon consent; and it is

FURTHER ORDERED, that the motion of defendant, Universal Terminal and Stevedoring Corporation is granted.

Order and Judgment (IBW), Dated January 3, 1977.

However, pursuant to Title 28, U.S.C. Sec. 1292(b), this Court, is of the opinion that this involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate determination of the litigation; and it is

FURTHER ORDERED, that the motion of defendant, Frank J. Holleran, Inc. is granted. However, pursuant to Title 28 U.S.C. Sec. 1292 (b), this Court is of the opinion that this involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate determination of the litigation.

Dated: New York, New York
Jan. 3, 1976

I.B.W.
U.S.D.J.

JUDGMENT ENTERED—1/3/77

RAYMOND F. BURGHARDT
Clerk

Affidavit of Jeffrey V. Boxer, Dated November, 1976, in Support of Motion for Partial Summary Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JEFFREY V. BOXER, being duly sworn deposes and says:

I am an attorney at law and associate of the firm of Lilly, Sullivan & Purcell, P. C., attorneys for the defendants Farrell Lines Incorporated and M. V. AUSTRAL ENTENTE.

I am familiar with all the facts and proceedings had heretofore herein.

This action was instituted by the plaintiff to recover damages alleged to have been sustained to seven (7) packages of machine parts carried aboard the defendant Farrell Lines's vessel the M. V. AUSTRAL ENTENTE.

The packages were loaded in Bay 19 of the vessel on or about April 1, 1975, while the ship was berthed at Port Newark. Bill of Lading No. 613 was issued to cover the shipment. This Short Form Bill of Lading is annexed hereto and marked as Exhibit "A". The Short Form Bill of Lading issued incorporated by reference the terms of the Farrell Lines Long Form of Bill of Lading filed with the Federal Maritime Commission as well as the terms of the Carriage of Goods by Sea's Act Title 46 Sec. 1304 sub. (5).

The Long Form Bill of Lading is annexed hereto as Exhibit "B".

The seven (7) packages were loaded aboard the vessel by co-defendant Universal Terminal and Stevedoring Corporation pursuant to a contract with the defendant Farrell Lines.

Exhibit A, Annexed to Affidavit of Jeffrey V. Boxer.

In addition, the cases were secured for sea by co-defendant Frank J. Holleran, Inc., who also had an oral contract with Farrell Lines to perform its work.

The substance of the defendant's motion is that the Court grant partial summary judgment in favor of the defendant Farrell Lines, and M. V. Austral Entente, limiting its liability, if any, to $500.00 per package. All of which is respectfully submitted.

JEFFREY V. BOXER

(Sworn to November , 1976.)

Exhibit A, Annexed to Affidavit of Jeffrey V. Boxer.

Short Form Bill of Lading

(Photoprints)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

SHORT FORM BILL OF LADING

FARRELL LINES
INCORPORATED

DO NOT WRITE IN THIS SPACE

SHIPPER/EXPORTER

SUHR MACHINE TOOL CORP.
839 GREENE STREET
ANN ARBOR, MICHIGAN 48106

DOCUMENT NO.

EXPORT REFERENCES

5191

EXHIBIT 1 FOR IDENT.
BORAK 5/19/76

CONSIGNEE (NON-NEGOTIABLE UNLESS CONSIGNED TO ORDER)

FORD MOTOR CO. OF AUSTRALIA LTD,
GEELONG, VICTORIA
AUSTRALIA

FORWARDING AGENT - REFERENCES

KENNELLY & SISMAN CO. FMC 2524
563 IVCAST STREET
DETROIT, MICHIGAN

POINT AND COUNTRY OF ORIGIN

ANN ARBOR MICHIGAN U.S.A.

NOTIFY PARTY

SAME AS CONSIGNEE

DOMESTIC ROUTING/EXPORT INSTRUCTIONS

ACE DORAN
& TO FARRELL LINES
LONG TRANSPORTATION

PIER

SHED 220 PORT NEWARK

EXPORTING CARRIER (Vessel and Flag)

S.S. AUSTRAL ENIENTE

PORT OF LOADING

NEW YORK

ONWARD INLAND ROUTING

These c[illegible] censed by U.S. for ultimate destination Australia Diversion contrary to U.S. law prohibited.

PORT OF DISCHARGE **

MELBOURNE, AUSTRALIA

FOR TRANSSHIPMENT TO

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMEN
FORD MOTOR CO. OF AUSTRALIA LTD. GEELONG AUTO PLANT VIA MELBOURNE	1	20' CONTAINER FAAA 2634808 SEAL 15143 SAID TO CONTAIN: 4 SKIDS MACHINES TOOLING AND EQUIPMENT FOR EXPANION OF MANUFACTURING FACILITIES AT THE GEELONG AUTOMOTIVE PLANT	22,120	309
	2	40' CONTAINERS FBLL 2011342 FBLL2013691 SEAL 15144 SEAL 15142 SAID TO CONTAIN: 15 SKIDS machines TOOLING AND EQUIPMENT FOR EXPANSION OF MANUFACTURING FACILITIES AT THE GEELONG AUTOMOTIVE PLANT	24,280 22,643	1377 1,116
	7	BOXES SAME AS ABOVE	190,305	4936

" GEELONG AUTOMOTIVE PLANT EXPANSION PROJECT NOT COMMERCIAL CARGO, NOT FOR RESALE ULTIMATELY EITHER TO BE CONSUMED DURING OF INCORPORATED INTO THE CONSTRUCTION, ERECTION OR EXPANSION OF THE PROJECT, REMOVED FROM AUSTRALIA OR DISPOSED OF LOCALLY FOR SALVAGE VALUE ONLY" [illegible]

To Be PREPAID Notice: All rates apply from ship's tackle at port of loading to end of ship's tackle at port of discharge, unless otherwise mentioned.

** Port of Discharge from Ship (Where goods are to be delivered to consignee or on-carrier)

* For Transshipment to (If goods are to be transshipped or forwarded at port of discharge)

FREIGHT AND OTHER CHARGES

..... Ft. @ ..... per 40 cubic ft.			
..... " " ..... "			
..... " " ..... "			
..... " " ..... "			
..... lbs. @ ..... 2240 pounds			
..... " " ..... "			
..... " " ..... "			
Total			

IN WITNESS WHEREOF, 3 Original Bills of Lading have been signe of this tenor and date, one of which being accomplished, the othe shall be void.

DATED AT NEW YORK B/L No.

FOR THE MASTER

FARRELL LINES

INCORPORATED

BY _____

(TERMS CONTINUED FROM REVERSE SIDE)

BALTIMORE PORT BRANCH
21[illegible] East Redwood Street
SAratoga 7-4417

NORFOLK PORT BRANCH
7737 Hampton Boulevard
423-5580

FARRELL LINES
INCORPORATED
General Office:
ONE WHITEHALL STREET, NEW YORK, N.Y. 10004
WHitehall 4-7460

PHILADELPHIA PORT BRANCH
716 Mall Building
MArket 7-5300

BOSTON PORT BRANCH
131 State Street
RI 2-9050

GENERAL EUROPEAN AGENTS ..... John T. Rennie, Son & Co., London, England

GENERAL AGENTS – AUSTRALIA
Wilh. Wilhelmsen Agency, Pty. Ltd. Sydney, (N.S.W.)

ADELAIDE	Dalgety Australia Ltd
BRISBANE	Wilh. Wilhelmsen-Agency Pty. Ltd.
FREMANTLE	Lynn Elder Pty. Ltd.
HOBART	A.G. Webster & Woolgrowers, Ltd.
MELBOURNE	Wilh. Wilhelmsen Agency Pty. Ltd.

GENERAL AGENTS – NEW ZEALAND

AUCKLAND, WELLINGTON	Dalgety New Zealand Ltd.

FARRELL LINES' OFFICES ALSO IN:
SYDNEY, AUSTRALIA
MELBOURNE, AUSTRALIA
WELLINGTON, NEW ZEALAND

GENERAL AGENTS SOUTH AFRICA
John T. Rennie & Sons (Pty.) Ltd.
Durban, South Africa

WALVIS BAY	Rennies' Consolidated (SWA) Pty. Ltd.
CAPE TOWN, PORT ELIZABETH, EAST LONDON, DURBAN	John T. Rennie & Sons
LOURENCO MARQUES	Rennies' Consolidated (LM) Lda.
BEIRA	Allen, Wack & Shepherd, Ltd.
NACALA	Sociedade De Agencias Maritimas, Lda

GENERAL AGENTS EAST AFRICA
Mackenzie (Kenya) Ltd., Mombasa, Kenya

MOMBASA	Mackenzie (Kenya) Ltd
DAR ES SALAAM, MTWARA, TANGA	The National Shipping Agencies Co., Ltd.
ZANZIBAR	Zanzibar State Shipping Corp.

AGENTS – WEST AFRICA

DAKAR, FREETOWN, ABIDJAN, TAKORADI, TEMA, DOUALA, POINTE NOIRE	Union Maritime et Commerciale
LAGOS/APAPA, PORT HARCOURT	UMARCO (Nigeria) Ltd.
CONAKRY	Societe Navale Guineenne
MONROVIA, HARBEL, BUCHANAN	Farrell Lines Incorporated
MATADI	Agence Maritime Internationale Du Zaire
LUANDA	Phs Van Ommeren (Angola) Lda
LOBITO	Manubuto Limitada
ZAMBIA	Leopold Walford Shipping Ltd.

SHORT FORM BILL OF LADING

Received the goods or containers, vans, trailers, pallet units or other packages said to contain the goods herein mentioned in apparent good order and condition, except as otherwise indicated herein, to be transported to the port of discharge named herein and/or such port or place as authorized or permitted hereby or so near thereunto as the ship can get, lie and leave, always in safety and afloat under all conditions of tide, water and weather, and there to be delivered to the consignee or on-carrier on payment of all charges due thereon.

This short form bill of lading, issued for the shipper's convenience and at his request instead of the Carrier's regular long form bill of lading, shall have effect subject to the provisions of the United States Carriage of Goods by Sea Act approved April 16, 1936, or if this bill of lading is issued in any other locality where there is in force a Carriage of Goods by Sea Act, ordinance or statute of a similar nature to the International Convention for the Unification of Certain Rules Relating to Bills of Lading, dated at Brussels, August 1924, it is subject to such Act, ordinance, statute and/or rules annexed.

The receipt, custody, carriage, delivery and transshipping of the goods or packages covered hereby are subject to the terms hereof and also to all the terms and conditions set forth in the Carrier's regular long form bill of lading used in this service which are hereby incorporated herein by reference with the same force and effect for all purposes as if herein set forth in full. The Carrier's regular long form bill of lading contains a number of provisions giving the Carrier certain rights and privileges and certain exceptions and immunities from and limitations of liability additional to those provided by the said United States Carriage of Goods by Sea Act or wherein any locality there is in force a Carriage of Goods by Sea Act or such other Act, ordinance or statute as may be applicable. Said regular long form bill of lading is included in the Carrier's tariff on file with the Federal Maritime Commission, Washington, D.C. and may be inspected there and at the offices of the Carrier and its agents.

If this bill of lading is issued in Canada, it shall have effect subject to the provisions of the Water Carriage of Goods Act, 1936, of the Dominion of Canada and to the terms of the aforesaid long form bill of lading.

"Clause 23 = General Average of Our Regular Long Form Bill of Lading is amended to incorporate the York/Antwerp Rules 1974".

All agreements with respect to the above goods or packages are superseded hereby and none of the terms hereof shall be deemed waived except in writing by an authorized agent of the Carrier.

(TERMS CONTINUED ON REVERSE HEREOF)

(DO NOT USE THIS SPACE FOR DESCRIPTION OF SHIPMENT)

Exhibit B, Annexed to Affidavit of Jeffrey V. Boxer.

Long Form Bill of Lading

(Photoprints)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

BEST COPY AVAILABLE

BRANCH OFFICES — USA/CANADA

BALTIMORE, MARYLAND
BOSTON, MASSACHUSETTS
CHICAGO, ILLINOIS
CLEVELAND, OHIO
DETROIT, MICHIGAN
PHILADELPHIA, PENNSYLVANIA
WASHINGTON, D. C.

AUSTRALIA — NEW ZEALAND
WEST, SOUTH, EAST AFRICA

FARRELL LINES
INCORPORATED

BRANCH OFFICES — OVERSEAS

ACCRA, GHANA
HARBEL, LIBERIA
JOHANNESBURG, REP. OF S.A.
MONROVIA, LIBERIA
NAIROBI, KENYA
SYDNEY, AUSTRALIA

REGULAR LONG FORM BILL OF LADING

The descriptive words or titles preceding each numbered clause of this bill of lading are inserted for convenience and identification only and are not part of nor in any way qualify the provisions of this bill of lading.

RECEIVED from the shipper, the goods or packages said to contain goods herein mentioned, in apparent good order and condition, except as otherwise indicated herein, to be transported to the port of discharge named herein and/or such other port or place as authorized or permitted hereby, or so near thereunto as the ship can get, lie and leave always in safety and afloat under all conditions of tide, water and weather, and there to be delivered to consignee or on carrier on payment of all charges due thereon.

The receipt, custody, carriage, delivery and transshipping of the goods are subject to the terms appearing on the face and back hereof, which shall govern the relations, whatsoever they may be, between shipper, consignee, carrier and ship in every contingency, wheresoever and whensoever occurring and whether the carrier be acting as such or as bailee, and also in the event of, or during deviation, or of conversion of the goods. The terms hereof shall not be deemed waived by the carrier except by written waiver, signed by a duly authorized agent of the carrier.

1. DEFINITIONS — In this bill of lading the words "ship" shall include any substituted vessel, and any vessel, craft or other means of conveyance whatsoever owned, chartered, operated, controlled and used by the carrier in the performance of this contract. "carrier" shall, except in the provision against waiver of the provisions hereof, include the ship as defined herein, her owner, demise charterer, and also any time charterer or person to the extent bound by this bill of lading, whether acting as carrier or bailee. "shipper" shall include the person named as such herein, and also the person for whose account the goods are shipped. "consignee" shall include the holder of this bill of lading properly endorsed, or the person who owns or is entitled to the goods, delivery of the goods. "person" shall include an individual, corporation, partnership and any other entity. "live animals" shall include birds, reptiles, fish and all animate things other than human beings. "charges" shall include freight and all expenses, costs, indemnities, damages and money obligations whatsoever payable by, or chargeable to, or for account of the goods, shipper or consignee in any of them, whether less of whether sustained, incurred or paid by the carrier in the first instance, or at the risk and expense of the goods. "loss or damage" shall include, in addition to physical loss of or damage to the goods, any loss or damage whatsoever sustained by the shipper or consignee in connection with the goods, including that by reason of delay, non-delivery, misdelivery, deviation or conversion. "transship" and/or "forward" shall mean and refer to transportation by rail, water, land or air or by two or more of such means and whether operated by the carrier or others or whether under another flag, and "government" and "authorities" shall each include the United Nations and any similar international organization, and also persons having or purporting to exercise power, control or other functions of a governmental or military nature whether in the name of a sovereign state or of a political subdivision thereof, whether de jure or de facto.

2. CLAUSE PARAMOUNT — This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, and which is deemed to be incorporated herein (except as otherwise specifically provided for herein) and nothing herein contained is to be deemed a surrender by the carrier of any of its rights, immunities, exemptions or liabilities

(TERMS CONTINUED ON OVERPAGE)

SHIP:..... PORT OF LOADING.....

SHIPPER:..... PORT OF DISCHARGE.....
(Where goods are to be delivered to consignee or on carrier)

CONSIGNED TO: Order of.....

ADDRESS ARRIVAL NOTICE TO:.....

DESTINATION OF GOODS:.....
(If goods are to be transshipped at the port of discharge from ship)

PARTICULARS FURNISHED BY SHIPPER OF GOODS

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	RATE	KILOS	GROSS WEIGHT POUNDS	MEASUREMENTS

TO BE **PREPAID**

NOTICE: All rates apply from ship's tackle at port of loading to end of ship's tackle at port of discharge, unless otherwise mentioned.

FREIGHT AND OTHER CHARGES			
FT. @	PER 40 CUBIC FT.		
" "	"		
" "	"		
" "	"		
" "	"		
" "	"		
LBS. @	2240 POUNDS		
" "	"		
" "	"		
TO BE PREPAID	TOTAL		

IN WITNESS WHEREOF, 3 Bills of Lading have been signed of this tenor and date, one of which being accomplished, the others shall be void.

B/L No.

FOR THE MASTER
FARRELL LINES
INCORPORATED

By _____

Scanlan Press, Inc.

(Terms of Bill of Lading Continued on Reverse Side Hereof)

Printed in U.S.A.

FARRELL LINES

INCORPORATED

BALTIMORE PORT BRANCH
211-213 EAST REDWOOD STREET
TEL: (301) 727-4417/8

GENERAL OFFICE: ONE WHITEHALL STREET, NEW YORK, N.Y. 10004
TELEPHONE: (212) 944-7460

PHILADELPHIA PORT BRANCH
716 THE MALL BUILDING
TEL: (215) 627-5300

GENERAL EUROPEAN AGENTS — John T. Rennie, Sons & Co., London, England

GENERAL AGENTS — AUSTRALIA AND NEW ZEALAND

With. Wilhelmsen Agency, Pty. Ltd. Sydney, (N.S.W.) Aus.

Adelaide — Dalgety Australia Ltd. (S.A.) Aus.

Brisbane — With. Wilhelmsen Agency Pty. Ltd. Aus.

Fremantle — Lyn Elder Pty. Ltd. (W.A.) Aus.

Melbourne — With. Wilhelmsen Agency Pty. Ltd. (Vic.) Aus.

Papeete — Compagnie de Messageries Maritimes, Tahiti

Port Kembla — John Wingate & Sons (N.S.W.) Aus.

Port Pirie — Dalgety Australia Ltd. (S.A.) Aus.

Wellington — Dalgety New Zealand Ltd., N.Z.

GENERAL AGENTS SOUTH AFRICA — John T. Rennie & Sons, Durban, South Africa

WALVIS BAY — Rennies' Consolidated (SWA) Pty. Ltd.

CAPETOWN — Thomson, Watson & Rennie (Pty.) Ltd.

PORT ELIZABETH, EAST LONDON, DURBAN — John T. Rennie & Sons

LOURENCO MARQUES — Rennies' Consolidated (LM) Ltda.

BEIRA — Allen, Wack & Shepherd, Ltd.

GENERAL AGENTS EAST AFRICA — Mackenzie Dalgety (Kenya) Ltd., Mombasa, Kenya

MOMBASA — Mackenzie Dalgety (Kenya) Ltd.

DAR ES SALAAM, TANGA — The State Trading Corp.

ZANZIBAR — The Zanzibar State Trading Corp.

AGENTS — WEST AFRICA

DAKAR, FREETOWN, ABIDJAN, TAKORADI, TEMA, DOUALA, POINTE NOIRE — Union Maritime et Commerciale

LAGOS, APAPA, PORT HARCOURT — UMARCO (Nigeria) Ltd.

CONAKRY — Societe Navale Guineenne

MONROVIA, HARBEL — Farrell Lines Incorporated

GRAND BASSA, SINOE — Oost Afrikaansche Compagnie

CAUE PALMAS — Firestone Plantation Co.

S. TOME — Lima & Gama, Ltda.

SANTA ISABEL — Cia. Auxiliar de Comercio y Navigacion S.A. "Ancora"

MATADI — Phs Van Ommeren (Congo) S.C.R.L.

LUANDA — Phs Van Ommeren (Angola) Ltda.

LOBITO — Manuel do S.A.R.L.

(TERMS CONTINUED FROM OVER PAGE)

or an increase of any of its responsibilities or liabilities under the Act. If anything herein contained be inverted under said Act in so far as it applies as a matter of law it shall, to the extent of such invalidity but no further, be null and void.

If this Bill of Lading is issued in Canada it shall have effect subject to The Water Carriage of Goods Act, 1936, of the Dominion of Canada which, to such event, is deemed to be incorporated herein (except as otherwise specifically provided for herein) and nothing herein contained is to be deemed a surrender by the carrier of any of its rights, immunities, exemptions or limits of liability or an increase of any of its responsibilities or liabilities under the Act. If anything herein contained be inverted under said Act in so far as it applies as a matter of law it shall, to the extent of such invalidity but no further, be null and void.

If this Bill of Lading is issued in the Republic of South Africa it shall have effect subject to The Sea Carriage of Goods Act, 1926 (Act No. 57 of 1926) and in such event, is deemed to be incorporated herein (except as otherwise specifically provided for herein) and nothing herein contained is to be deemed a surrender by the carrier of any of its rights, immunities, exemptions or limits of liability or an increase of any of its responsibilities or liabilities under the Act. If anything herein contained be inverted under said Act in so far as it applies as a matter of law it shall, to the extent of such invalidity but no further, be null and void.

If this Bill of Lading is issued in Sweden where there is in force a Carriage of Goods by Sea Act or ordinance or statute of a similar nature to the International Convention for the Unification of Certain Rules Relating to Bills of Lading, dated at Brussels, August 1924, is subject to the provisions of such Act, ordinance or statute and rules thereto annexed.

Prior to loading on and after discharge from the ship, the goods, while in the carrier's custody, are at the risk of the shipper, consignee or owners of the goods with respect to any loss, damage howsoever arising, occurring or happening to the goods except if liability for any loss or damage is to be determined as a port or place where such responsibility is governed otherwise or unenforceable, then the provisions of said Carriage of Goods by Sea Act or of any similar statute (except subdivisions 2 (i) and (q) of Section 4 thereof and except as to which responsibility is governed by Section 4(2) of the United States Revised Statutes and amendments thereto, or any other country or place where laws shall be applicable. This Bill of Lading shall not be deemed to be or give rise to a personal contract of the carrier, and the shipper, consignee, receiver or assignee shall be deemed to waive or otherwise to deprive the carrier of, or release the carrier from any such rights, immunities, limitations or exemptions.

4. BENEFICIARIES OF EXEMPTIONS, ETC. — (a) Because of the relationship between both and as the carrier requires persons and companies to perform or assist it in performance of work or services undertaken by it as specifically agreed between the parties hereto that the masters, officers, crew members, contractors, stevedores, longshoremen, agents, representatives, employees or others used, engaged or employed by the carrier in the performance of such work or services, shall each be the beneficiaries of and shall be entitled to the same, but no further, exemptions and immunities from and limitations of liability provided for herein in favor of the carrier that bill of lading, whether printed, written, stamped or otherwise.

(b) Without limitation of the generality of the foregoing exemptions and immunities from and limitations of liability provided for in subdivision (a), the persons and companies mentioned therein shall be entitled to the same, but no further, benefits which the carrier has under Clauses 19 and 20 of this bill of lading.

(c) Without limitation of the generality of the exemptions and immunities from and limitations of liability provided for in subdivisions (a) and (b), the persons and companies mentioned therein shall be entitled to the same, but no further, benefits which the carrier has under Clause 21 of this bill of lading.

5. CARRIER'S RIGHT TO SUBSTITUTE VESSELS, ETC. — The carrier shall have liberty to carry the goods to the port of discharge by any other vessel than the vessel mentioned herein, whether of the same or a different flag, type or speed, or whether before, during or after loading the goods or any part thereof, and whether the substituted ship arrives or departs or is scheduled to do so before or after the ship named herein, (b) may, in case the goods or any part thereof are shut out, leave the ship powered without the goods or any part thereof and the goods may be forwarded in whole or in part by any means, (c) may, if the goods or any part of them are damaged or lost or in danger of damage or loss or of becoming worthless or subject to charges disproportionate to their value, or because of their condition, take any measures to safeguard, recondition, recover possession of, sell, return to shipper, hold, store or otherwise deal with or dispose of the goods or any part of them, or forward the goods or any part of them by any means to or toward port of discharge, and (d) may, if there shall be a force majeure interruption, abandonment or frustration of the voyage at the port of loading or elsewhere or because of the need of repair to the ship or of the insolvency of the ship to prosecute the voyage promptly at the port of loading or elsewhere, substitute another vessel, or store forward the goods or any part thereof by any means.

The carrier is not required to, and does not undertake to, deliver the goods at port of discharge or elsewhere at any particular time or to meet any market or in time for any particular use or sale and does it understand that the ship or substitute ship will sail or arrive at any ports or in accordance with any schedule. The carrier shall not be liable for any loss or damage arising or resulting from delayed or earlier arrival of the goods or any damage or expense incurred by the shipper or consignee because of any change in date of sailing or arriving.

All such discharges, procedures or acts taken pursuant to this clause shall be at the risk and expense of the goods.

10. SUFFICIENCY OF PACKING AND MARKING — The shipper, whether principal or agent, represents and warrants that the goods are properly described, marked, ensured and packed in adequate containers and may be carried in the ordinary course without damage to the goods, ship, or property of persons and guarantees the correctness of the particulars, weight of each piece or package and description of the goods and agrees to ascertain and to disclose in writing on shipment, any condition, nature, quality, ingredient or characteristic of the goods of, or which might adversely affect any of an inflammable, explosive, corrosive, radioactive, dangerous, noxious or damaging nature, or any conditions, nature, quality, ingredient or characteristic that may cause damage, injury or destruction to the goods, other property, the ship or its personnel, and for the failure to do so the shipper agrees to be liable for and fully indemnify the carrier and hold it harmless in respect of any injury or death of any person and loss or damage to cargo or property. The carrier shall not be considered as to the correctness of any such particulars, weights or representations.

If at any time the goods, whether added to or shut out, are, in the judgment of the carrier or master or of the servants or agents of either, unsuitable, spoiling, decayed, injurious, offensive, unfit for further carriage or storage, or dangerous to health or other property, or if the goods are condemned or ordered destroyed by any such authorities, the goods may, forthwith and without notice, be sold or otherwise disposed of, destroyed, discharged, stored, put ashore at any place or aboard lighters or craft or otherwise disposed of by the carrier, master or others, solely at the risk and expense of the goods, where the carrier's responsibility shall cease, and the carrier shall not be liable for any loss or damage whatsoever.

Any goods that are or that or may be considered by any civil or military authorities or the master inflammable, explosive, injurious, hazardous or dangerous, shipped without such full disclosure, or if shipped with the knowledge and consent of the carrier or master as to their nature and character, may become a danger to the ship or those aboard, the goods or other property, or any part thereof, may at any time or place be landed, thrown overboard, destroyed or rendered innocuous without compensation to the shipper or consignee and extra charges and expenses, if any, for discharging, lightering, handling, casting for, disposing of or otherwise so assisted by such goods shall be borne by the goods.

11. PERISHABLE GOODS — Fruits, vegetables, seeds and any goods of a perishable nature when accepted may be carried in ordinary cargo compartments or on deck and without special facilities or attendance, unless the carrier has made and inserted in this bill of lading a written agreement that such goods will be carried in a refrigerated, chilled, heated, specially ventilated or otherwise special compartment.

Unless a special agreement in writing and inserted in this bill of lading, the carrier does not undertake and shall not be liable for failure to give the goods, whether or not of a perishable nature, any attention or special care, handling, storage, storage or facilities not given ordinary cargo, nor for any negligence, default, discharge or deliver the goods into or to any refrigerated, chilled, cooled, ventilated, insulated, heated, steam, or specially equipped place, compartment or other facility, and the shipper represents and warrants the goods do not require any such care or facilities.

12. LIVE ANIMALS — Live animals, when accepted, are received, kept and carried solely at shipper's risk of accident, escape or mortality and without any warranty or undertaking whatsoever by the carrier that the ship is seaworthy, fitted, manned, equipped and supplied for their reception, carriage and preservation.

With respect to live animals all risk of loss or damage by perils inherent in or incidental to the carriage of live animals shall be borne by the shipper and the carrier shall have the benefit of all the provisions of this bill of lading not inconsistent with the provisions of this clause and shall have the benefit of all and the same rights, immunities, exemptions and limitations as provided for in Sec. 4 of the United States Carriage of Goods by Sea Act, 1936, excepting subdivisions (1), (2)(i), (3)(iii), (5) and (4) thereof. In no event shall the carrier be liable for any loss or damage to live animals arising or resulting from any cause whatsoever, including unseaworthiness, unless affirmatively proved to be due to lack of due diligence to make the ship seaworthy and to have her properly manned, equipped and supplied, and to make the holds and other parts of the ship in which animals are carried safe and fit for their reception, carriage and preservation.

13. REFRIGERATION — Refrigerator, insulated, heated, cooled, ventilated or other special compartments are not available at all ports or places and the carrier does not undertake that such will be available at the time the goods arrive at the port of loading or thereafter. The carrier shall not be liable for any loss or damage to the goods caused by the failure of such compartments to maintain any particular temperature or to carry the goods at any temperature specified in this bill of lading, or by the breakdown of such compartments, or by the failure of the goods to arrive at the port of discharge in time to be carried in such compartments, or by the failure of the carrier to notify the consignee of the arrival of the goods.

14. CARRIER'S OPTION TO STORE GOODS, ETC. — The carrier may, without notice, but shall not be obliged to, enter into any private or public warehouse or place, or on any dock, or may remain on board any craft or vessel at any port or place, when in the carrier's opinion it is necessary or advisable on account of the character of the goods or the circumstances of the case, or when required by the custom of the port or place, and there store the goods at the sole risk and expense of the goods. Such storage shall be deemed a complete delivery of the goods hereunder, and thereafter the carrier shall have no responsibility in respect of the goods, and the carrier may, but shall not be obliged to, require payment of freight and charges before storage.

15. DELIVERY BY MARKS, SWEEPINGS, ETC. — The carrier shall not be liable for delay in or failure of delivery in accordance with marks unless the goods shall have been clearly, legibly and durably marked with identifying marks and the port of discharge. The carrier shall not be required to separate or deliver in accordance with brand, marks, numbers, sizes or types of packages but may so separate and deliver in accordance with bulking ullages. Goods that cannot be identified as to leading marks, goods that are not separated from their containers or packages, cargo improperly, inadequately and only unclassified goods not otherwise accounted for may, for the purpose of completing delivery, be allocated to the various consignees of cargo of substantially of general like character in proportion to any apparent shortage, loss of weight or damage, and such goods or such part thereof shall be accepted as good delivery. Loss of or damage to goods in bulk shall without separation from other bulk cargo of substantially of general like character shipped by the shipper or by others may be divided and accepted in proportion among the several shipments.

Inbulk cargo in bulk may be pumped aboard by shipper as fast as ship can receive at the shipper's risk and expense in so far as the ship's connection and shall be received at the port of discharge at ship's connection as soon and so fast as carrier is prepared to deliver.

20. MENDING, COOPERAGE, FINES, ETC. — The shipper and consignee shall be liable for, indemnify the carrier and ship and hold them harmless against, and the carrier shall have a lien on the goods for any payment and charges for mending, cooperage, baling, repairing or reconditioning the goods or any packages, containers and all expenses incurred in putting, caring for or otherwise made for the benefit of the goods, whether the goods be salvaged or not, and for any payment, expense, penalty, fine, duty, tax of shipper, loss, damage, detention, demurrage, or liability of whatsoever nature, sustained or incurred by or on behalf of the carrier or owner of the ship or consignee with the goods or by reason of the goods being or having been on board, or because of ship's failure to produce customary or other proper permits, certificates or any papers that may be required at any port or place or shipper's failure to give information or otherwise to comply with all laws, regulations and requirements of law in connection with the goods or from any other act or omission of the shipper or consignee, also for all the charges, charges, legal fees, expenses or disbursements which the carrier may suffer, incur or pay in connection with or arising out of issues, or attachments, arrests, executions, claims or legal proceedings of any description against the goods by third parties or any proceedings by way of interpleader or otherwise which the carrier may bring to determine the right of ownership or possession to or to the goods, and for any retainer of or charges for opposing or attempting to oppose possession of the goods. The shipper and consignee authorizes the carrier to pay and/or accept such charges, expenses and other claims mentioned above and the carrier or master may solely at the expense of and as agent for the shipper engage other persons to unload, cooper, bale, repair or recondition packages or goods, require or seek to regain possession of the goods and to do all things fore and advisable for the benefit of the goods.

21. FREIGHT, LIENS, ETC. — Freight shall be payable, at carrier's option, on gross intake or discharged weight or measurement or on a value or other basis. Freight may be calculated on the basis of any particulars concerning the goods furnished by the shipper, but the carrier may at any time weigh, measure and value the goods, and open packages to ascertain contents. If there is an error in or omission of any particulars and if on correction the freight or charges should be higher the carrier may collect the additional freight and charges. If shipper's particulars are found to be erroneous and substantially freight is payable, the shipper, consignee and goods shall be liable for any expense incurred in examining, weighing, measuring and valuing the goods.

All freight to the port of discharge named herein and all advance charges against the goods shall be considered completely earned on receipt of the goods by the carrier, whether the freight or charges be prepaid or be stated or intended to be prepaid or to be collected at port of discharge or destination or subsequently, and the carrier shall be entitled absolutely to all freight and charges, which shall be actually paid or not, and to retain and recover them under all circumstances whatever, ship and/or cargo lost or not lost, on the voyage changed, broken up, transferred or abandoned.

All charges or sums payable to the carrier are due when incurred and such charges and all unpaid freight or other charges shall be paid in full and without any offset, claim or deduction in the currency named in this bill of lading, or at carrier's option in currency of the highest rate of exchange for bankers' sight bill current on the day or the money as the customs house of the port of discharge, or on the day of delivery, whichever is highest.

The shipper and consignee shall be jointly and severally liable to the carrier for the

[illegible] by various acts to which, however, the carrier may not be entitled, such as [illegible] licenses and authorizations thereto, or acts when country or place where laws shall be applicable. This bill of lading shall not be deemed to be or give rise to a personal contract of the carrier, [illegible] or this bill of lading, expressed or implied, shall be deemed to waive or operate to deprive the carrier of, or reduce the benefits of any such rights, immunities, limitations or exemptions.

4. BENEFICIARIES OF EXEMPTIONS, ETC. — (a) Because of the relationship between him and as the carrier requires persons and companies to perform or assist it in performance of work or services undertaken by it in this contract, it is expressly agreed between the parties hereto that the master, officers, crew members, contractors, stevedores, longshoremen, agents, representatives, employees or others used, engaged or employed by the carrier in the performance of such work or services, shall each be the beneficiaries of and shall be entitled to the same, but no further, exemptions and immunities from and limitations of liability which the carrier are under this bill of lading, whether printed, written, stamped or otherwise incorporated or referred to.

(b) In addition to the provisions for extensions of the exemptions and immunities from and limitations of liability provided for in subdivision (a), the persons and companies mentioned in that subdivision shall be entitled to the benefit of each and every provision of this bill of lading, but no further, because which the carrier has made express provision in this bill of lading.

(c) Without limitation or restriction of the exemptions and immunities from and limitations of liability provided for in subdivisions (a) and (b), the persons and companies mentioned in subdivision (a) shall be entitled to the same, but no further, benefits which the carrier has under Section 3 (2) of the Carriage of Goods by Sea Act, including but not limited to Sections 3 (6), 4 (2) (a), 4 (2) (b), 4 (2) (c), 4 (2) (d), 4 (2) (e), 4 (2) (f) and 4 (5) of said Act.

(d) CLAUSE PARAMOUNT CLAUSE — If this ship is not owned by or chartered by demise to the PARAMUT LINE INCORPORATED this bill of lading shall, with respect to the carriage, custody and care of the goods while aboard the ship or on her tackles, have effect only as a contract between the shipper, consignee and the owner of the ship or demise charterer as the case may be as principal made through the agency of said company which shall be under no responsibility whatever for loss of or damage to the goods or with respect to such carriage, custody and care of the goods. It is [illegible] that the PARALLEL LINE INCORPORATED, [illegible] or any person other than the owner or demise charterer is the carrier or bailee of the goods as regards [illegible] limitations or limitations of liability provided by law and [illegible] of this bill of lading shall be excludable to it or not other persons.

5. DEVIATION CLAUSE — If any ship is not owned by or chartered by demise to the PARAMUT LINE INCORPORATED this bill of lading shall, with respect to the carriage, custody and care of the goods while aboard the ship or on her tackles, have effect only as a contract between the shipper, consignee and the owner of the ship or demise charterer as the case may be as principal made through the agency of said company which shall be under no responsibility whatever for loss of or damage to the goods or with respect to such carriage, custody and care of the goods. It is [illegible] that the PARALLEL LINE INCORPORATED, [illegible] or any person other than the owner or demise charterer is the carrier or bailee of the goods as regards [illegible] limitations or limitations of liability provided by law and [illegible] of this bill of lading shall be excludable to it or not other persons.

6. SCOPE OF VOYAGE — The voyage may or may not include all usual, intended, [illegible] ports, customary, ordinary, ordinary or advertised routes, ports or places, whether or not named or disclosed in this bill of lading.

As often as may for any reason whatsoever which the carrier or master may deem advisable, whether relating to the custom of a port, intermediate, subsequent, or overlapping voyage, or to obtain a cleaning, slipping, or whether before or after manipt or loading of the goods, and whether at or off the voyage may be commenced, the ship, at any stage of the voyage may, without notice to the shipper or consignee (a) may proceed under any conditions of sea and weather, depart from or change the intended, usual, scheduled, geographic, direct, customary, ordinary or advertised route and proceed in any direction by any route whatsoever, or return to or call at or pass at least at any ports or places in any rotation, sequence or number, whether [illegible] or named, or not in the United States, except subsections (1), (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2) (f), (3) and (4) thereof as if the same were set forth herein in full. In no event shall the carrier be liable for any loss or damage to goods so carried on deck arising or resulting from any cause whatsoever, including unseaworthiness, unless affirmatively proved by the shipper or consignee to be due to lack of due diligence or to the fault or neglect of the carrier or those for whom it may otherwise be responsible, but the carrier shall not in any event be liable for any act, neglect or default in the navigation or the management of the ship.

7. STOWAGE UNDER AND ON DECK, ETC. — Goods stowed in pens, forecastle, [illegible], shelter deck, passenger space, tween-deck, bunker space, or any other covered-in space shall be deemed to be stowed under deck for all purposes including General Average.

The shipper represents that the goods covered by this bill of lading need not be stowed under deck and it is agreed that it is proper to and they may be stowed on deck unless the shipper requires the carrier in writing before delivery of the goods to the carrier that carrier shall stow on deck.

With respect to goods carried on deck all risk of loss or damage by perils inherent to or incidental to such carriage shall be borne by the shipper or consignee and the carrier shall have the benefit of all the provisions of this bill of lading except those inconsistent with the provisions of this clause, and the carrier shall have as provisions of this clause the benefit of all and the same rights, immunities, exemptions and limitations as provided for in Sec. 4 of the Carriage of Goods by Sea Act of the United States, except subsections (1), (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2) (f), (3) and (4) thereof as if the same were set forth herein in full. In no event shall the carrier be liable for any loss or damage to goods so carried on deck arising or resulting from any cause whatsoever, including unseaworthiness, unless affirmatively proved by the shipper or consignee to be due to lack of due diligence or to the fault or neglect of the carrier or those for whom it may otherwise be responsible, but the carrier shall not in any event be liable for any act, neglect or default in the navigation or the management of the ship.

8. BULK CARGO — As no carrier has no reasonable means of checking the quantity or weight of goods shipped in bulk, the carrier does not represent the quantity or weight of such goods as furnished by the shipper and appearing in this bill of lading as being accurate.

9. SPECIE & VALUABLES — Gold, silver, specie, bullion or other valuables, including those named or described in Sec. 4281 of the Revised Statutes of the United States, will not be received by the carrier unless their true character and value are disclosed to the carrier and a special written agreement therefor has been made in advance, and will not, in any case, be handled or loaded by the carrier. No such valuables shall be considered received by or delivered to the carrier until brought aboard the ship by the shipper and taken part in the actual possession of, and a written receipt therefor is given by, the master or other officer in charge. Such valuables will only be delivered by the carrier aboard the ship on presentation of bills of lading properly endorsed, and upon such delivery or before, the carrier's responsibility shall cease. If delivery is not so taken promptly after the ship's arrival at the port of discharge, the goods may be retained aboard or landed or carried on, entirely at the risk and expense of the goods.

10. THROUGH CARGO AND TRANSSHIPMENT — The carrier or master, in the exercise of its or his discretion and although transshipment or forwarding of the goods may not have been contemplated or provided for herein, may at port of discharge or any other place whatsoever forward or forward the goods or any part thereof by air, land or water at the risk and expense of the goods and at any time, whether before or after loading on the ship named herein and by any route, whether within or outside the scope of the voyage or beyond the port of discharge or destination of the goods and without notice to the shipper or consignee. The carrier or master may select such transshipping or forwarding for any reason, including but not limited to awaiting a vessel or other means of transportation whether by the carrier or others.

The carrier or masters in making arrangements with any person for or in connection with all transshipping or forwarding of the goods or the use of any means of transportation not used or operated by the carrier, shall be considered solely the agent of the shipper and consignee and without any other responsibility whatsoever or for the cost thereof. The receipt, custody, carriage and delivery of the goods by any such person or agencies and all transshipping and forwarding shall be subject to all the terms, provisions, exceptions of such person's or its carrier's form of bill of lading or agreement then in use, whether or not issued and even though such provisions may be less favorable to the shipper or consignee in any respect than the provisions of this bill of lading. The shipper and consignee authorize the carrier or master to arrange with any such person or agencies that the lowest valuation or limitation of liability available to such person or agencies shall be applied to the goods and the carrier shall apply.

All responsibility of the carrier in any capacity shall altogether cease and the goods shall be deemed delivered, if a bill this contract of carriage shall be deemed fully performed on actual or constructive delivery of the goods to itself as such agent of the shipper the consignee or to any such person or agencies at port of discharge from ship or elsewhere in case of an earlier transshipment.

The shipper and consignee shall be liable to this carrier for and shall indemnify it against all expenses of forwarding and transshipping, including any increase in or additional freight or other charges whatsoever.

Pending or during forwarding or transshipping this carrier or the master may store the goods ashore or afloat solely as agent of the shipper and at the risk and expense of the goods and this carrier shall not be responsible for the act, neglect, delay or failure to act of anyone to whom the goods are entrusted or delivered for storage, handling, or any service incidental thereto.

In case the carrier issues a bill of lading covering transportation by a local or other carrier prior to the goods being delivered to and put into the physical custody of the carrier, it shall not be under any responsibility or liability whatsoever for any loss or damage to the goods occurring prior to or after the actual receipt or custody of the goods by it at the port or place of transshipment and in arranging for the transportation to such port or place where the goods are put in its physical custody it acts solely as the agent of the shipper.

17. LIGHTERAGE — The carrier or master, in the exercise of its or his discretion, may at any time, whether or not customary and without notice, require the goods to be lightered to or from the ship at the risk and expense of the goods and, in this event, the carrier or master may make arrangements for lighterage or use of craft but, in so doing, shall be considered solely as the agent of the shipper and consignee and without any other responsibility whatsoever. The carrier shall not be responsible for the absence of, condition, unworthiness or manning of such lighter or craft nor for any loss or damage to the goods while on such lighter or craft or in the custody of the lighterman who shall be considered agents of the shipper and consignee.

If the carrier elects to lighter the goods in or with lighters or craft operated or controlled by it, the carrier shall have the benefit of all the clauses, rights, exemptions, immunities and limitations contained in this bill of lading, including those incorporated herein, with respect to such lighterage and may collect the sum thereof from shipper or consignee.

18. DISCHARGE, DELIVERY, ETC. — The carrier shall not be required to give any notification whatsoever of the arrival, discharge or any disposition of or action taken with respect to the goods, any custom or practice of the port, the carrier or others to the contrary notwithstanding and even though the goods are consigned to some with provision for notice to a named person.

The carrier or master may appoint a stevedore or any other person to unload and take delivery of the goods and such delivery from ship's tackle shall be conclusive evidence and all responsibility of the carrier shall then terminate.

It is agreed that when possession of the goods is removed or taken by the customs or other authorities or by any operation of any lighter, craft, dock, pier, store, warehouse, [illegible] or other place, or when the goods are [illegible] or with lighters or craft operated or controlled by it, the carrier shall have the benefit of all the clauses, rights, exemptions, immunities and limitations contained in this bill of lading, including those incorporated herein, with respect to such lighterage and may collect the sum thereof from shipper or consignee.

18. DISCHARGE, DELIVERY, ETC. — The carrier shall not be required to give any notification whatsoever of the arrival, discharge or any disposition of or action taken with respect to the goods, any custom or practice of the port, the carrier or others to the contrary notwithstanding and even though the goods are consigned to some with provision for notice to a named person.

The carrier or master may appoint a stevedore or any other person to unload and take delivery of the goods and such delivery from ship's tackle shall be conclusive evidence and all responsibility of the carrier shall then terminate.

It is agreed that when possession of the goods is removed or taken by the customs or other authorities or by any operation of any lighter, craft, dock, pier, store, warehouse, [illegible] or other place, or when the goods are [illegible] or with lighters or craft operated or controlled by it, the carrier shall have the benefit of all the clauses, rights, exemptions, immunities and limitations contained in this bill of lading, including those incorporated herein, with respect to such lighterage and may collect the sum thereof from shipper or consignee.

19. PERISHABLE GOODS — The carrier or master may, in the exercise of its or his discretion, without notice to the shipper or consignee and shall be considered as taken as agent of the shipper and consignee and is [illegible] and expenses, not without prejudice to any lien of the carrier. Any expenditure or the goods pursuant to this clause shall constitute complete delivery of the goods and the responsibility of the carrier in respect of the goods shall be free of further responsibility. If any such expenses reasonable, as herein provided, the carrier shall be entitled to [illegible] compensation, including, but not limited to, proportionate additional freight if the length or duration of the voyage is increased.

20. ORDERS, ETC. — The carrier, master and ship shall have liberty to comply with any orders, instructions, requirements, requests or suggestions, including any such which may be given, [illegible] by any person or persons claiming to be acting or purporting entitled from or [illegible] authorized by any carrier in master, charter or not relating to the ship, the goods, other cargo or to passengers, crew, or other persons aboard, ashore, overboard, whatsoever and whensoever given by or received from the government of any nation or department thereof or by any person acting or purporting to act with the authority of such government or department, or any consulate or person having or purporting to have, under the usage[illegible] or [illegible] of the ship, the right to do so or to approve the voyage. Any deviation whatsoever of the goods pursuant to this clause shall constitute delivery and be a fulfillment of the contract of carriage by the carrier, which shall not be under any further responsibility with the goods shall thereafter be solely at their own risk and expense. For any and all expenses of charges incurred by the carrier in connection with any such compliance, the carrier shall be entitled to extra compensation including, but not limited to, proportionate additional freight if the length or duration of the voyage is increased.

The ship may carry contraband, explosives, munitions, warlike stores, dangerous and hazardous cargo and may call armed or unarmed, with or without convoy, and with or without lights.

21. LIBERTIES — The carrier or master, in his or his discretion, at any time and place, whether or for the reason for or is at his option or intention was thereon at time of receipt of the goods, without notice (1) may substitute another ship, whether operated by the carrier or [illegible] (2) may proceed or stay in or off any port or place whether on or off the customary, usual, direct, scheduled or advertised route, and whether the same is [illegible] or not, (3) may call at any port or place once or more than once, in any order or omit calling at any port or place whether scheduled or not, (4) may load or unload cargo or passengers at any port or place, (5) may carry the goods beyond the port of discharge and return to or call at any port or place whether on or off the route, (6) may load or unload fuel, provisions, cargo or passengers at any port or place, (7) may tranship, discharge or leave behind any goods or any part thereof which may be shipped hereunder, (8) may carry the goods or any part thereof on deck or under deck without notice, (9) may comply with any orders or recommendations of any government (or any department or agency thereof) or any person or body acting or purporting to act as or on behalf of such government or any person or body having command or purporting to have command over the vessel, including any foreign de facto government or regency, council or commission, whether such government, person or body is recognized by the United States or not, (10) may call at any port or place to [illegible] or [illegible] (11) may [illegible] (12) may [illegible] (13) may [illegible] (14) may [illegible] (15) may [illegible] (16) may [illegible] (17) may [illegible] (18) may [illegible] (19) may [illegible] (20) may [illegible] (21) may [illegible] (22) may [illegible] (23) may [illegible]

Affidavit of Celestino Tesoriero, in Support of Motion for Partial Summary Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

CELESTINO TESORIERO being duly sworn deposes and says that he is a member of the firm of Grainger & Tesoriero, attorneys for the defendant Universal Terminal and Stevedoring Corp. and makes this affidavit in support of its motion for partial summary judgment. On or about March 31, 1975 seven (7) cases of machinery were delivered to Shed 220, Port Newark. On April 1, 1975 the seven (7) cases were loaded aboard the SS AUSTRAL ENTENTE by the defendant stevedores, pursuant to agreement with the defendant Farrell Lines, Inc.

The shipment was covered by the Carrier's short form bill of lading, a copy of which is annexed hereto as exhibit "A". This bill of lading incorporated COGSA and the terms and conditions of the Carrier's regular long form bill of lading which is annexed hereto as exhibit "B".

After the cases had been loaded aboard the vessel the defendant Frank J. Holleran, Inc., pursuant to an agreement with the vessel owner Farrell Lines Inc., secured and lashed the cargo. After the vessel left the Port of New York bound for its ultimate destination of Australia, the plaintiff's cargo was allegedly damaged as a result of alleged shifting of cargo. The bill of lading which covers plaintiff's shipment contains a Paramount Clause which incorporates the Carriage of Goods by Sea Act. Clause

4 of the bill of lading is the Himalaya clause which extends to the stevedore, among others, the exemptions and immunities from and limitations of liability contained therein. Clause 25 of the bill of lading limits liability to $500 per package which is the customary per package limitation clause contained in bills of lading. The Carriage of Goods by Sea Act title 46, section 1304(5) limits liability to $500 per package. The law is well settled that the bill of lading may extend to stevedores and others the exemptions, immunities and limitations of liability contained in the bill of lading. The language of clause 4 in the bill of lading is unequivocable in extending the exemptions, immunities and limitations contained therein to stevedores.

WHEREFORE, deponent respectfully prays that an order be entered granting defendant Universal motion for summary judgment limiting said defendant's liability, if any, to $500 per package.

.....

CELESTINO TESORIERO

(Sworn to October 25, 1976)

Affidavit of Robert H. Peterson, in Support of Motion for Partial Summary Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ROBERT H. PETERSON, being duly sworn, deposes and says:

I am an attorney and a member of the firm of Hill, Betts & Nash, attorneys for defendant Frank J. Holleran, Inc. (hereinafter "Holleran") in the above-entitled action.

I make this affidavit in support of an application to this Court for an order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, limiting the liability, if any, of Holleran to the sum of $500 per package for alleged damage sustained to plaintiff's cargo.

Plaintiff alleges damages for alleged damage sustained to 7 crates of machinery delivered on or about March 31, 1975 to defendant Universal Terminal and Stevedoring Corporation (hereinafter "Universal") at Shed 220, Port Newark, N.J. for loading and stowing aboard the M.V. "AUSTRAL ENTENTE" for carriage aboard said vessel by defendant Farrell Lines, Inc. to Melbourne, Australia. Plaintiff's cargo was loaded and stowed by Universal on or about April 1, 1975 in the upper 'tween deck of Bay 19. After stowage had been completed, the cargo was secured by Holleran on April 2, 1975.

The vessel sailed from Port Newark during the early morning hours of April 3, 1975.

On or about April 4, 1975, while at sea, the cargo in the upper 'tween deck of Bay 19 allegedly broke stow. The vessel proceeded to Charleston, South Carolina, as a port of

refuge and allegedly plaintiff's cargo in the upper 'tween deck was found to be damaged and the chocking, shorings, and lashings were reportedly broken and smashed. It is also alleged that the hull of the vessel had been punctured.

The contract of carriage between plaintiff and Farrell Lines is set forth in a short form bill of lading which is annexed hereto and marked Exhibit "A". The short form bill of lading incorporated the provisions of the United States Carriage of Goods by Sea Act and also the terms of Farrel Lines' long form bill of lading, a copy of which is annexed hereto as Exhibit "B".

The relevant provisions in Farrell Lines' long form bill of lading will be set forth and discussed in the memorandum of law submitted by Holleran in support of this motion.

It is respectively submitted that there is no genuine issue of fact that Holleran was acting as a contractor for Farrell Lines, and, therefore, pursuant to the provisions of the bill of lading, is entitled to the benefit of the $500 package limitation under the relevant provisions of the bill of lading.

WHEREFORE, deponent respectfully requests an order granting partial summary judgment to Holleran limiting liability, if any, to $500 per package and for such other, further and different relief as to the Court may seem just.

ROBERT H. PETERSON

(Sworn to November 18, 1976.)

Answering Affidavit of Vincent L. Leibell, Jr., in Opposition to Motion for Partial Summary Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

VINCENT L. LEIBELL, JR., being duly sworn, deposes and says:

1. I am an attorney-at-law admitted to practice before this Court, and a member of the firm of Bigham Englar Jones & Houston, attorneys for the plaintiff herein. I make this affidavit in opposition to motions by two defendants for partial summary judgment.

The Facts:

2. On or about March 31, 1975 the seven cases of machine parts, which are the subject of this litigation, were delivered to defendant Farrell Lines, Inc. at Port Newark for ocean carriage on the M.V. "AUSTRAL ENTENTE" to Melbourne, Australia, there to be delivered by said defendant to the consignee. Defendant Farrell Lines issued a clean bill of lading to the shipper (see Exhibit "A" attached to the moving affidavit of defendant Frank J. Holleran, Inc., and deposition of Farrell Lines, pp. 6 and 7).

3. Defendant Universal Terminal and Stevedoring Corporation stowed all of the cargo loaded on to the M.V. "AUSTRAL ENTENTE" and defendant Frank J. Holleran,

Inc. lashed all of the said cargo. (See deposition of Farrell Lines, pp. 31 through 34.) Plaintiff's cargo, along with cargo owned by other shippers, was stowed in "Bay 19" of the vessel (see deposition of Farrell Lines, p. 9).

4. One day after the vessel left the Port of New York, while it was heading south about 70 miles off the east coast of the United States, a huge case of mining machinery (*not owned by the plaintiff*), weighing 76,500 pounds, "broke stow and commenced moving heavily from side to side thereby being in contact with the other cases in this hatch and damaging the same", (pp. 2 and 3 of both preliminary and final survey reports of surveyor James D. Lucas—who represented the ocean carrier—which were marked as plaintiff's Exhibits "11" and "6", respectively, at deposition of Farrell Lines on May 19, 1976. Copies of both survey reports are attached hereto as plaintiff's Exhibits "1" and "2").

5. The fact that the case, which broke stow and created the domino effect which subsequently damaged plaintiff's cargo, was not part of plaintiff's shipment is of the utmost importance to the determination of these motions for partial summary judgment. Plaintiff's legal argument concerning the importance of this fact is set forth in its brief filed with this affidavit.

6. It should also be noted that defendant Farrell Lines, in a letter it sent to plaintiff's attorneys under date of September 5, 1975, stated, "During the voyage the vessel experienced heavy weather and some cargo broke loose which smashed into the Ford Motor Co. equipment".

7. The defense of heavy weather is not involved in these motions for partial summary judgment. Actually, the

weather was the kind that should be expected at that time of year off Cape Hatteras. Both before and after the 76,500-pound case of mining machinery (which did not belong to the plaintiff) broke loose in Bay 19, the vessel experienced winds of only Force 6 to 7 on the Beaufort Scale (see pp. 26, 27 and 28 of Farrell Lines' deposition). This means winds of up to 30 miles per hour—hardly stuff from which a heavy weather defense can be fashioned.

8. After the cases of cargo in Bay 19 broke their stow and lashings, the M.V. "AUSTRAL ENTENTE" put into the port of Charleston, South Carolina, where it discharged the damaged case containing the 76,500-pound piece of mining machinery as well as plaintiff's damaged cargo. (See Lucas surveys attached hereto and marked as plaintiff's Exhibits "1" and "2".)

Plaintiff's Legal Position Concerning Each Of The Three Motions For Partial Summary Judgment:

9. Plaintiff concedes that *defendant Farrell Lines, Inc.* is entitled to the Five Hundred Dollar ($500.00) per package limitation pursuant to the provisions of *The Carriage Of Goods By Sea Act,* 46 U.S.C. 1304(5).

10. Plaintiff contends that *defendant Universal Terminal and Stevedoring Corporation* is not entitled to limit its liability to Five Hundred Dollars ($500.00) per package pursuant to the terms of *The Carriage of Goods By Sea Act, supra,* or any other law, because its negligence in improperly stowing cargo in Bay 19 was not negligence in connection with *this contract of carriage* (the bill of lading issued to plaintiff) but rather was negligence in the performance of another contract (another bill of lading) to which the plaintiff was not a party.

Answering Affidavit of Vincent L. Leibell, Jr.

11. The so-called "Himalaya Clause" (Paragraph 4 of Farrell Lines' long form bill of lading, attached to stevedore's moving affidavit as Exhibit "B") upon which both the stevedore and lasher defendants rely to give them the benefit of the ocean carrier's Five Hundred Dollar ($500.00) package limitation, specifically limits the transfer of these benefits to "this contract" (the Ford bill of lading). Plaintiff does not claim, and did not allege in its complaint, that the stevedore defendant failed to properly perform its duties in connection with its contract to stow the Ford cargo. However, the stevedore did not properly perform its duties in connection with someone else's cargo (not covered by "this contract"—the Ford bill of lading). And the stevedore's failure to properly perform its duties in connection with another contract, resulted in serious damage to plaintiff's goods. Accordingly, the stevedore is not entitled to the benefits of the so-called "Himalaya Clause" in the Ford bill of lading. Cases in support of our position are referred to in plaintiff's brief filed with this affidavit.

12. Plaintiff contends that *defendant Frank J. Holleran, Inc.* is not entitled to the benefits of the so-called "Himalaya Clause" for the same reasons (its negligence did not involve the Ford cargo) set forth in paragraphs "10" and "11" above. In addition, plaintiff contends that defendant lasher is not entitled to limit its liability, because it was not mentioned as one of a long list of various persons included as "beneficiaries of exemptions" under the provisions of paragraph 4 of the long form bill of lading (Exhibit "B" attached to defendant Holleran's moving affidavit). Our courts will not stretch the language of a bill of lading to include someone who might easily have been included. This point is also discussed in plaintiff's brief filed with this affidavit.

Exhibit 1, Annexed to Affidavit of Vincent L. Leibell, Jr.

WHEREFORE, deponent respectfully requests that an order be entered, granting the motion of defendant Farrell Lines, Inc. for partial summary judgment limiting its liability to the plaintiff to Five Hundred Dollars ($500 00) per case, and denying the motions of defendant Universal Terminal and Stevedoring Corporation, and defendant Frank J. Holleran, Inc., for partial summary judgment.

VINCENT L. LEIBELL, JR.

(Sworn to November 23, 1976.)

Exhibit 1, Annexed to Affidavit of Vincent L. Leibell, Jr.

Preliminary Survey Report
(Photoprints)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

James D. Lucas & Company

MARINE SURVEYORS

CHARLESTON, SOUTH CAROLINA

PRELIMINARY

SURVEY REPORT

EXHIBIT 11 FOR IDENT.
BORAK 5/19/76

THIS IS TO CERTIFY, THAT THE UNDERSIGNED DID ON 5 APRIL 1975 AND SUBSEQUENT DATES, AT THE REQUEST OF MESSRS. SOUTHEASTERN MARITIME COMPANY,INC., CHARLESTON, S. C., ATTEND THE AMERICAN "AUSTRAL ENTENTE" AS SHE LAY AFLOAT AT DOCK OF THE SOUTH CAROLINA STATE PORTS AUTHORITY, NORTH CHARLESTON TERMINALS, FOR THE PURPOSE OF ASCERTAINING THE NATURE AND EXTENT OF DAMAGE SUSTAINED TO PART OF HER CARGO AS A RESULT OF SAID VESSEL HAVING ENCOUNTERED HIGH WINDS AND HEAVY SEAS DURING THE VOYAGE FROM NEW YORK, N. Y., SAID VESSEL BOUND FOR AUSTRALIA, AND HAVE TO REPORT AS FOLLOWS:

The vessel put in to Charleston, S. C. as a Port of refuge. For further particulars, see Master's Noted Protest and Abstract of Vessel's Log.

The cases machinery and unboxed pieces of equipment were loaded in New York, N. Y., and were stowed in Bay number 19 (No. 9 hatch). port and starboard sides, upper tween deck.

Upon examination of said compartment prior to opening the hatch, (entering through masthouse), I found pieces of heavy machinery turned on side, jammed into bulkheads and the vessel's side. Re-securing of the pieces was evident, the same performed by the vessel's crew.

The pieces in question consisted of eight cases machinery and one unboxed piece. All cases had been demolished and the loose damaged pieces were present, every one having broken their lashings. In checking as to original lashings prior to re-securing, I was informed that 5/8 inch wires and 7/8 inch turnbuckles had been used. The number of wires per piece of machinery was not ascertained.

The pieces of machinery involved and damages as could be noted are as follows:

Marks: CONQUIP
1399
SYDNEY
AUSTRALIA
MADE IN USA

Commodity: One piece on wheels self-driven Pettibone unboxed Model 204C Cary Lift Log Handling Machine

This piece stowed starboard forward, apparently athwartship.

Damages noted: Hood crushed.
Radiator cracked and holed.
Grille broken and bent.

Damages, if any, to the engine whereby the radiator could have caused the same, are unknown.

Measurements: 25' x 9'10" x 11'6".

At the request of Messrs. Intermaritime Forwarding Company, New York, I am attempting to assist said firm in having the machine repaired in Charleston, S. C.. They informed that the machine was sold F.O.B. factory and that the shipper, Pettibone, has no more interest in the machine.

Marks: NOYES
3096
P-37926 A
BRISBANE
1/2

Commodity: Two cases mining machinery, manufactured by Lee-Norse Company, Charleroi, Penn.

One case parts found to have been stowed in a container and was not in this hatch.

The other large piece, stowed starboard aft, apparently athwartship.

Weight, large piece: 76,500 pounds.

Damages noted: Left front water jacket dented and set in, setting stabilizer inboard of said water jacket in.
Left rear water jacket scuffed.
Left rear grille torn.
Fan assembly bent.
Right tread guard plate dented.
2 small guard plates dented.

Damages, if any, to other parts in way of the left front water jacket and stabilizer are unknown and can only be determined when the machine is repaired.

Measurements: 27'04" x 6'10" x 8'11".

Joint Survey on this piece of machinery was held with Mr. H. E. Hudson, Manager, Parts Marketing Division of Lee-Norse Company. The above damages were jointly agreed to. Mr. Hudson contacted the Consignee and recommended that the piece of machinery be forwarded on to Brisbane where the minor damages can be repaired.

This recommendation being agreed to by all concerned, the piece of machinery will be forwarded on the AM SS "AUSTRAL ENSIGN" sailing Charleston on or about 27 April 1975.

This piece of machinery was completely cased. The top, sides and ends of case had been completely crushed and the construction of the same cannot be ascertained. The bottom of the case was of 8" x 10" timbers, placed three abreast on each side and one through the center. The floor of the case was of 2" x 6" planks.

Upon discharging this piece of machinery from the vessel, the same was hooked up by the use of Stevedore wires and upon lifting the same, the bottom of the case remained on the vessel's tween deck floor. Upon examination of the bottom of the case, there were no signs of the piece of machinery having been bolted to the bottom of the case.

From the condition of the other pieces of machinery in this compartment, it is my opinion that this piece of mining machinery broke stow and commenced moving heavily from side to side thereby being in contact with the other cases in this hatch and damaging the same.

This piece of machinery actually digs into the side of the coal mine picking up what it has dug and shoots the same onto a conveyor into waiting cars to be taken from the mine.

Marks: FORD MOTOR CO.
OF AUSTRALIA LTD.
GEELONG AUTO PLANT
VIA MELBOURNE

Commodity: Two cases machine tooling and equipment for expansion of manufacturing facilities at the Geelong Automotive Plant.

These cases stowed port side, fore and aft.

One case, machine number D 5393, AP 281351.
34 spindle tapping shuttle machine, operation number 150.

Damage noted: See remarks below.

Marks: FORD MOTOR CO.
OF AUSTRALIA LTD.
GEELONG AUTO PLANT
VIA MELBOURNE

Commodity: One case machine tooling and equipment for expansion of manufacturing facilities at the Geelong Automotive Plant.

This case stowed port side, fore and aft.

One case, machine number D 5394, AP 281351.
2 way semi-finish boring machine for cylinder bores, operation number 160.

Marks: FORD MOTOR CO.
OF AUSTRALIA LTD.
GEELONG AUTO PLANT
VIA MELBOURNE

Commodity: One case machine tooling and equipment for expansion of manufacturing facilities at the Geelong Automotive Plant.

This case stowed port side, fore and aft.

One case, machine number D 5396, AP 281351.
2 way finish boring machine for cylinder bores, operation number 140.

Marks: FORD MOTOR CO.
OF AUSTRALIA LTD.
GEELONG AUTO PLANT
VIA MELBOURNE

Commodity: Three cases machine tooling and equipment for expansion manufacturing facilities at the Geelong Automotive Plant.

These cases stowed port side, fore and aft.

One case, machine number D 5397, AP 281351.

2 spindle pass thru milling machine for finishing bank faces, operation number 60.

Measurements vary to the cases, weights also vary. These machines jointly surveyed with representatives of the Ford Motor Company and Surveyor of General Adjustment Bureau, Inc., Charleston, S. C. office.

Initial recommendation of Ford Motor Company was to dispatch personnel from their plant and dis-assemble the machines in Charleston and salvage all sound parts. Final recommendation was to have the pieces in question returned to the factory which was also recommended as the sound manner to handle the damage. This was agreed to and the machines were returned to the factory via truck line departing Charleston, S. C. on 14 April 1975.

PACKING:

The actual packing is hard to picture as all cases were adrift in the hatch and it is assumed that the same were in crates constructed as follows:

2 pieces adjacent to each other 8" x 10" timbers each side placed on the 10, one identical piece through the center. At each end, on top of the bottom skids, was a single piece of 8" x 10" timber. The flooring consisted of 2" x 6" planks on the 6. The bottoms of the cases gave evidence that the machines had been thru-bolted at various points, said bolts running the bottom 8" x 10" timbers.

Smaller cases contained bottom skids of four pieces of 8" x 8" timbers. At each end was one piece of 8" x 8" timber and the flooring consisted of 2" x 6" planks. There was evidence that the pieces in these cases had been thru-bolted in two locations only.

The side, end and tops were not present but thought to have been 2" x 4" uprights and approximately 3/8 inch plywood. Metal corner bands were on the corners.

The damages sustained to these machines could not be accurately determined as the same were broken in areas, pipes and lines bent and leaking, etc.. The only manner in which the actual damage could be ascertained is to have the machines dis-assembled at the plant from where they originated and then checked out.

As per photos, which have already been forwarded through South-eastern Maritime Company, local Agents, it can be noted that the machines were on side, jammed against the vessels skin, etc..

As a candid opinion, from what was explained to the undersigned, the large piece of mining machinery appears to have started on its own and commenced working in the hatch as it would in a Mine.

THIS REPORT IS ISSUED WITHOUT PREJUDICE AND IS FOR THE BENEFIT OF WHOM IT MAY CONCERN:

JAMES D. LUCAS,
SURVEYOR.

Exhibit 2, Annexed to Affidavit of Vincent L. Leibell, Jr.

Survey Report

(Photoprints)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

LLOYD'S AGENCY

James D. Lucas & Company

MARINE SURVEYORS

CHARLESTON, SOUTH CAROLINA

CORRESPONDENT

SURVEY REPORT

6 February 1976

THIS IS TO CERTIFY, THAT THE UNDERSIGNED DID ON 5 APRIL 1975 AND SUBSEQUENT DATES, AT THE REQUEST OF MESSRS. SOUTHEASTERN MARITIME COMPANY, INC., CHARLESTON, S. C., ATTEND THE AMERICAN "AUSTRAL ENTENTE" AS SHE LAY AFLOAT AT DOCK OF THE SOUTH CAROLINA STATE PORTS AUTHORITY, NORTH CHARLESTON TERMINALS, FOR THE PURPOSE OF ASCERTAINING THE NATURE AND EXTENT OF DAMAGE SUSTAINED TO PART OF HER CARGO AS A RESULT OF SAID VESSEL HAVING ENCOUNTERED HIGH WINDS AND HEAVY SEAS DURING THE VOYAGE FROM NEW YORK, N. Y., SAID VESSEL BOUND FOR AUSTRALIA, AND HAVE TO REPORT AS FOLLOWS:

The vessel put in to Charleston, S. C. as a Port of refuge. For further particulars, see Master's Noted Protest and Abstract of Vessel's Log.

The cases machinery and unboxed pieces of equipment were loaded in New York, N. Y., and were stowed in Bay number 19 (No. 9 hatch) port and starboard sides, upper tween deck.

Upon examination of said compartment prior to opening the hatch, (entering through masthouse), I found pieces of heavy machinery turned on side, jammed into bulkheads and the vessel's side. Resecuring of the pieces was evident, the same performed by the vessel's crew.

The pieces in question consisted of eight cases machinery and one unboxed piece. All cases had been demolished and the loose damaged pieces were present, every one having broken their lashings. In checking as to original lashings prior to re-securing, I was informed that 5/8 inch wires and 7/8 inch turnbuckles had been used. The number of wires per piece of machinery was not ascertained.

The pieces of machinery involved and damages as could be noted are as follows:

Marks: CONQUIP
1399
SYDNEY
AUSTRALIA
MADE IN USA

Commodity: One piece on wheels self-driven Pettibone unboxed Model 204C Cary Lift Log Handling Machine

This piece stowed starboard forward, apparently athwartship.

Damages noted: Hood crushed.
Radiator cracked and holed.
Grille broken and bent.

Damages, if any, to the engine whereby the radiator could have caused the same, are unknown.

Measurements: 25' x 9'10" x 11'6".

At the request of Messrs. Intermaritime Forwarding Company, New York, I am am attempting to assist said firm in having the machine repaired in Charleston, S. C.. They informed that the machine was sold F.O.B. factory and that the shipper, Pettibone, has no more interest in the machine. This piece of machinery was forwarded on via another Farrell Line vessel at a later date.

Marks: NOYES
3096
P-37926 A
BRISBANE
1/2

Commodity: Two cases mining machinery, manufactured by Lee-Norse Company, Charleroi, Penn.

One case parts found to have been stowed in a container and was not in this hatch.

The other large piece, stowed starboard aft, apparently athwartship.

Weight, large pieces: 76,500 pounds.

Damages noted: Left front water jacket dented and set in, setting stabilizer inboard of said water jacket in.
Left rear water jacket scuffed.
Left rear grille torn.
Fan assembly bent.
Right tread guard plate dented.
2 small guard plates dented.

Damages, if any, to other parts in way of the left front water jacket and stabilizer are unknown and can only be determined when the machine is repaired.

Measurements: 27'04" x 6'10" x 8'11".

Joint survey on this piece of machinery was held with Mr. H. E. Hudson, Manager, Parts Marketing Division of Lee-Norse Company. The above damages were jointly agreed to. Mr. Hudson contacted the Consignee and recommended that the piece of machinery be forwarded on to Brisbane where the minor damages can be repaired.

This recommendation being agreed to by all concerned, the piece of machinery will be forwarded on the AM SS "AUSTRAL ENSIGN" sailing Charleston on or about 27 April 1975.

This piece of machinery was completely cased. The top, sides and ends of case had been completely crushed and the construction of the same cannot be ascertained. The bottom of the case was of 8" x 10" timbers, placed three abreast on each side and one through the center. The floor of the case was of 2" x 6" planks.

Upon discharging this piece of machinery from the vessel, the same was hooked up by the use of stevedore wires and upon lifting the same, the bottom of the case remained on the vessel's tween deck floor. Upon examination of the bottom of the case, there were no signs of the piece of machinery having been bolted to the bottom of the case.

From the condition of the other pieces of machinery in this compartment, it is my opinion that this piece of mining machinery broke stow and commenced moving heavily from side to side thereby coming in contact with the other cases in this hatch and dameging the same.

This piece of machinery actually digs into the side of the coal mine picking up what it has dug and shoots the same onto a conveyor into waiting cars to be taken from the mine.

Repair costs are as follows:

1. Operator's Side	
A. Crawler Frame Cover Plate bent	
1 ea. 1-612692-010 cover	107.8[illegible]
1 ea. 13406-000 cover	44.4[illegible]
2. Pump Motor Side or Opposite Operator's Side	
A. Crawler Frame Cover Plate bent	
1 ea. 1-612692-020 cover	107.8[illegible]
1 ea. 13405-000 cover	44.4[illegible]
B. Side Pump Motor Compartment Cover bent	
1 ea. 10905-000 side cover	106.8[illegible]
C. Perforated Plate on rear door on Pump Motor Compartment bent	
1 ea. 10910-003 perforated plate	8.90
3. Cutter Boom Assembly	
a. 150 HP Motor Support Plate bent	
1 ea. 11035-000 bracket	60.47
1 ea. 10897-001 Mtg. angle	12.42
4. Conveyor Line	
A. Fan Section bent down and needs replaced	
1 ea. 1-515113-005 Fan section	3,603.05
TOTAL	$ 4,101.26

Marks: FORD MOTOR CO.
OF AUSTRALIA LTD.
GEELONG AUTO PLANT
VIA MELBOURNE

Commodity: Two cases machine tooling and equipment for expansion of manufacturing facilities at the Geelong Automotive Plant.

These cases stowed port side, fore and aft.

One case, machine number D 5393, AP 281351.
34 spindle tapping shuttle machine, operation number 150.

Damages noted: See remarks below.

Marks: FORD MOTOR CO.
OF AUSTRALIA LTD.
GEELONG AUTO PLANT
VIA MELBOURNE

Commodity: One case machine tooling and equipment for expansion of manufacturing facilities at the Geelong Automotive Plant.

This case stowed port side, fore and aft.

One case, machine number D 5394, AP 281351.
2 way semi-finish boring machine for cylinder bores, operation number 160.

Marks:

FORD MOTOR CO.
OF AUSTRALIA LTD.
GEELONG AUTO PLANT
VIA MELBOURNE

Commodity: One case machine tooling and equipment for expansion of manufacturing facilities at the Geelong Automotive Plant.

This case stowed port side, fore and aft.

One case, machine number D 5396, AP 281351.
2 way finish boring machine for cylinder bores, operation number 140.

Marks:

FORD MOTOR CO.
OF AUSTRALIA LTD.
GEELONG AUTO PLANT
VIA MELBOURNE

Commodity: Three cases machine tooling and equipment for expansion manufacturing facilities at the Geelong Automotive Plant.

These cases stowed port side, fore and aft.

One case, machine number D 5397, AP 281351.

2 spindle pass thru milling machine for finishing bank faces, operation number 60.

Measurements vary to the cases, weights also vary. These machines jointly surveyed with representatives of the Ford Motor Company and Surveyor of General Adjustment Bureau, Inc., Charleston, S.C. office.

Initial recommendation of Ford Motor Company was to dispatch personnel from their plant and dis-assemble the machines in Charleston and salvage all sound parts. Final recommendation was to have the pieces in question returned to the factory which was also recommended as the sound manner to handle the damage. This was agreed to and the machines were returned to the factory via truck line departing Charleston, S.C. on 14 April 1975.

PACKING:.

The actual packing is hard to picture as all cases were adrift in the hatch and it is assumed that the same were in crates constructed as follows:

2 pieces adjacent to each other 8" x 10" timbers each side placed on the 10, one identical piece through the center. At each end, on top of the bottom skids, was a single piece of 8" x 10" timber. The flooring consisted of 2" x 6" planks on the 6. The bottoms of the cases gave evidence that the machines had been thru-bolted at various points, said bolts running the bottom 8" x 10" timbers.

Smaller cases contained bottom skids of four pieces of 8" x 8" timbers. At each end was one piece of 8" x 8" timber and the flooring consisted of 2" x 6" planks. There was evidence that the pieces in these cases had been thru-bolted in two locations only. The side, end and tops were not present but thought to have been 2" x 4" uprights and approximately 3/8 inch plywood. Metal corner bands were on the corners.

The damages sustained to these machines could not be accurately determined as the same were broken in areas, pipes and lines bent and leaking, etc.. The only manner in which the actual damage could be ascertained is to have the machines dis-assembled at the plant from where they originated and then checked out.

As per photos, which have already been forwarded through Southeastern Maritime Co., local Agents, it can be noted that the machines were on their sides, jammed against the vessels skin, etc..

It was recommended that joint survey be held with Ford Motor Company at their plant with a representative of Farrell Lines present.

THIS REPORT IS ISSUED WITHOUT PREJUDICE AND IS FOR THE BENEFIT OF WHOM IT MAY CONCERN:

JAMES D. LUCAS,
SURVEYOR.

Reply Affidavit of Celestino Tesoriero, in Support of Motion for Partial Summary Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

CELESTINO TESORIERO being duly sworn, deposes and says that he is a member of the firm of Grainger & Tesoriero, attorneys for the defendant Universal Terminal and Stevedoring Corporation and submits this reply affidavit in support of its motion for partial summary judgment.

It is first to be noted that the cargo in Bay 19 was not lashed by the defendant Universal but by the defendant Frank P. Holleran, Inc. The cargo is loaded pursuant to a preloading plan submitted by the carrier's superintendent to the stevedore, and once stowed in accordance therewith, Universal's work is completed.

On pages 13 and 14 of the deposition of Universal by Thomas Bain, the following testimony was elicited:

> Q. Do you have a loading plan given to you?
> A. Yes, sir.
> Q. Who gives you the loading plan?
> A. The Farrell Line ship's superintendent.
> Q. Did Universal remain on the job until the lashing was completed?
> A. We had nothing to do with the lashing, sir. Once the cargo is stowed in the vessel in accordance with the Farrell Line ship's superintendent's instructions our work is completed.

On pages 35 and 36 of the deposition the following testimony was elicited:

> Q. Did Universal hire Frank J. Holleran to do the security of the AUSTRAL ENTENTE?
> A. No, sir.

Reply Affidavit of Celestino Tesoriero.

Further testimony from Mr. Holleran of Frank J. Holleran, Inc. corroborated the testimony of Mr. Bain that Universal had nothing to do with the lashing of the cargo and that Farrell Lines employed Frank J. Holleran, to secure the cargo aboard the AUSTRAL ENTENTE and did, in fact secure the cargo in question.

Plaintiff alleges that the cargo broke its lashings and caused the damage. The obligation of the carrier and its beneficiaries, under the bill of lading, extends from the time of receipt of the cargo by the carrier to the time of delivery. Whatever occurs between those two periods of time is in furtherance of the contract of carriage evidenced by the bill of lading and subject to all of the terms and conditions and limitations from liability contained therein.

In performing work on one piece of cargo, such is in furtherance of the duties and obligations owed to every other piece of cargo.

Upon arrival of the vessel at Charleston, S.C. the cargo in Bay 19, as evidenced in the survey report, was found to be with all cases demolished and loose pieces, two pieces having broken their lashings, and what machinery or case first broke loose is a matter of mere conjecture.

WHEREFORE, deponent requests that defendant Universal's motion for partial summary judgment be in all respects granted.

CELESTINO TESORIERO

(Sworn to November 30, 1976.)

Reply Affidavit of Robert H. Peterson, in Support of Motion for Partial Summary Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ROBERT H. PETERSON, being duly sworn, deposes and says:

I am an attorney duly admitted to this Court and a member of the firm of Hill, Betts & Nash, the attorneys for defendant Frank J. Holleran, Inc. (hereinafter "Holleran") in the above-entitled action.

I make this affidavit in reply to the plaintiff's answering papers submitted in opposition to Holleran's motion for partial summary judgment on the issue of the package limitation.

I. THE HOLLERAN AGREEMENT

The Rule 9(g) statement annexed to the answering affidavit of Vincent L. Leibell, Jr., Esq., sworn to November 23, 1976, states that "the plaintiff does not concede that Holleran acted pursuant to an oral agreement between Holleran and Farrell Lines." (See paragraph 2.) However, there are no facts set forth in the affidavit of Mr. Leibell, nor are there any facts of record herein whatsoever, which dispute or even question the evidence of that agreement, which was clearly established at the depositions of both Holleran and defendant Farrell Lines. Plaintiff's counsel noticed these examinations and had the opportunity to question these witnesses on this issue. Thus, while

plaintiff may not concede the existence of the oral agreement between Holleran and Farrell Lines, there is no genuine issue of fact that Holleran performed the securing aboard the M/V AUSTRAL ENTENTE, pursuant to an oral agreement with defendant Farrell Lines.

II. THE SPURIOUS ISSUE OF CAUSATION

Plaintiff's answering papers state categorically that a crated piece of mining machinery first broke stow, causing all the damages which are sought herein. Charging that Holleran and Universal "negligently performed their respective duties in connection with the stevedoring and lashing" (see Complaint at paragraph 10) of that other cargo, plaintiff argues that limitation should be denied to those defendants, since their negligence did not occur "in performance of work or services undertaken by it (Farrell Lines) in this contract (*i.e.*, Ford's bill of lading)", as required by the Himalaya clause herein.

* * *

III. CONCLUSION

WHEREFORE, your deponent respectfully requests that an order be entered, granting the motion of defendant Frank J. Holleran, Inc., for partial summary judgment, limiting its liability, if any, to the sum of $500 per package, and granting such other relief as may be deemed just under the circumstances.

ROBERT H. PETERSON

(Sworn to December 2, 1976.)

Affidavit of Vincent L. Leibell, Jr., in Response to Reply Affidavits.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

VINCENT L. LEIBELL, JR., being duly sworn, deposes and says:

1. I make this affidavit in response to the reply affidavits of Celestino Tesoriero, Esq. (attorney for the stevedore) and Robert H. Peterson, Esq. (attorney for the lasher).

As to Mr. Tesoriero's Reply Affidavit

2. The first half of Mr. Tesoriero's reply affidavit is devoted to an argument that the defendant Holleran (the lasher) is responsible if the lashings broke loose. While we agree that the lasher is responsible, it does not follow (particularly in view of their cross-complaints) that the stevedore is not also responsible. The lashing might have broken because the stevedore improperly stowed the 76,500-pound missing machine.

3. The last half of Mr. Tesoriero's reply affidavit advances an argument that Judge Edelstein labelled a "rather novel theory", which he could not support. *Cabot Corp.* v. *S.S. "Mormacscan"*, 298 F.Supp. 1171, 1174. That theory, as described by Judge Edelstein in the *Cabot* case (*supra*) is "that completion of the loading operation for

the entire ship would benefit each of the individual shippers". As noted by Judge Edelstein "the phrase 'this contract' must be construed strictly and cannot be held to refer to anything but the bill of lading under which Cabot's cargo was to be shipped".

4. Mr. Tesoriero also argues that "what machinery or case first broke loose is a matter of mere conjecture". We do not think that is so, because affirmative proof as to what actually happened can be found not only in the report of the vessel's surveyor but in a letter from the Farrell Lines, Inc. itself.

5. It should be noted that Mr. Tesoriero does not dispute any of the facts advanced by the plaintiff.

* * * *

VINCENT L. LEIBELL, JR.

(Sworn to December 3, 1976.)

Excerpts From Deposition of Frank J. Holleran, Inc.

Page 6, Lines 10 through 13:

"Q. Would you please produce a copy of the contract which employed Frank J. Holleran to do the lashing on the M.V. 'AUSTRAL ENTENTE'?

"A. We don't have a contract as a written contract. The contract that we do have was an oral contract."

Page 23, Lines 3 through 15:

"Q. On April 2nd or thereabout, 1975. And that was pursuant to an oral contract existing between Holleran and Farrell Lines, is that correct?

"A. Yes, sir.

Excerpts From Deposition of Frank J. Holleran, Inc.

"Q. Was there any contract existing between Universal and Holleran to perform lashing or carpentry work aboard the 'AUSTRAL ENTENTE'?

"A. No. sir.

"Q. Has there ever been any contract between Holleran and Universal to perform lashing work aboard the 'AUSTRAL ENTENTE'?

"A. No, sir."

Excerpts From Deposition of Farrell Lines, Inc.

Page 32, Line 24 through Page 33, Line 6:

"Q. Do you know how long Frank J. Holleran, Inc. has been doing the lashing work for Farrell Lines?

"A. For quite a number of years, the exact period I don't really know, only during the period I have been with Farrell Lines; say roughly 10 years or a little better, they have been doing it."

Endorsed Memorandum of Wyatt, U.S.D.J., Re Motion of Defendant Farrell Lines.

The within motion is granted in open Court without opposition. Settle order.

INZER B. WYATT
USDJ

Dec 3, 1976

Endorsed Memorandum of Wyatt, U.S.D.J., Re Motion of Defendant Universal Terminal.

The within motion is granted on the ground that the stevedore is entitled to the same limitations as the carrier. The Cabot case in the District Court (298 F.Supp. 1171) involved a different bill of lading but if it is contrary to my Conclusion I respectfully disagree with it, noting that the Court of Appeals did not review the point. Settle order. Which may include the statement in 28 USC § 1292 (b).

INZER B. WYATT
USDJ

Dec 3, 1976

Endorsed Memorandum of Wyatt, U.S.D.J., Re Motion of Defendant Frank J. Holleran, Inc.

The within motion is granted on the same basis as that of the stevedore Settle Order.

INZER B. WYATT
USDJ

Dec 3, 1976

Order of the Court of Appeals, Granting Leave to Appeal.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 15th day of February, one thousand nine hundred and seventy-seven.

Ford Motor Company,
Plaintiff-Appellant

v.

M.V. "Austral Entente", her engines, boilers, etc.,

v.

Farrell Lines, Inc., Universal Terminal & Stevedoring Corporation & Frank J. Holleran, Inc.,
Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the petitioner Ford Motor Company dated January 12, 1977 for leave to appeal pursuant to 28 USC § 1292(b) be and it hereby is granted.

It is further ordered that

WILFRED FEINBERG
WILFRED FEINBERG

MURRAY I. GURFEIN
MURRAY I. GURFEIN

THOMAS J. MESKILL
THOMAS J. MESKILL, Circuit Judges

(61171)

v copies of the joint appendix
received this 1st day of April
1977

RECEIVED
APR 1 - 1977
LILLY, SULLIVAN & PURCELL

COPY RECEIVED
1
HILL, BETTS & NASH

COPY RECEIVED
GRAHAM J. MELONIERO
BY: J. Mellon
DATE: 4-1-77